THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE D.APPA RAO

WRIT APPEAL NO.396 of 2002

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6th April 2006

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 09.11.2000 in W.P.NO.4576 OF 1996 on the file of the High Court.)

Between:

V.Pydikonda.

...APPELLANT

AND

1. Hindustan Steel Works Construction Ltd., rep.by its Chairman-cum-Managing Director, Shakespere Sarani Road, Viii Floor, Calcutta-71.
2. The General Manager, Hindustan Steel Works Construction Ltd., Visakhapatnam.

...RESPONDENTS

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE D.APPA RAO

WRIT APPEAL NO.396 OF 2002

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JUDGMENT: (Per the Hon'ble Mr Justice B.Prakash Rao)

Heard Sri S.Sreeramachandra Murthy, the learned counsel appearing on behalf of the appellant and Sri T.S.Anand, the learned counsel appearing on behalf of the respondents.

The appellant is the unsuccessful writ petitioner, who seeks to assail the dismissal order dated 09.11.2000 in the Writ Petition being W.P.No.4576 of 1996 filed, *inter alia*, seeking a writ of mandamus declaring the impugned order dated 16/17.01.1996 in PER/RR/531/95/M-116 as illegal and arbitrary and issuance of a consequential direction for settlement of his case under voluntary retirement scheme P1.18 (5) 94–L-3183 dated 21.12.1994 and to accord the benefits as per the circular dated 16.06.1995 in PER/RR/531 (CWAS) 578.

The case of the appellant/writ petitioner is that he has been employee of the respondents/management working as a Work Assistant and on completion of 19 years service, he sought voluntary retirement on his own reasons and accordingly, he submitted applications on 30.06.1994 and 21.12.1994 for voluntary retirement. The initial application was rejected on 23.08.1994, as there is no sufficient response and the later application was accepted on 31.12.1994. Consequently, he retired from service with effect from 19.01.1995. Following the news item appeared in news paper on 23.01.1995, the appellant submitted another application dated 01.02.1995 for awarding the benefits under the revised Scheme and the same was also followed by other applications, ultimately setting up a claim under the later Scheme which is known as Employees Welfare Assistance Scheme dated 16.06.1995. Since the same was not acceded to, the appellant filed the Writ Petition being W.P.No.4576 of 1996. Contesting the claim of the appellant, the case of the respondents before the learned Single Judge was that having regard to the fact that he was retired on 19.01.1995 itself in terms of the very application seeking voluntary retirement, the benefits in accordance with the Scheme existing in vogue as on the date were paid and therefore, he was not entitled to any benefits of the Scheme which has come into force subsequently. The learned Single Judge held that since the petitioner was paid all such benefits on the basis of the Scheme existing in Vogue, the request of the petitioner for his claim under the subsequent varied Scheme was not acceded to. Hence, the appeal.

The learned counsel for the appellant strenuously contended that having

regard to the fact that the subsequent Scheme dated 21.12.1994 is only a continuation to the earlier Scheme dated 10.11.1988 under which the appellant's case squarely falls; he would be entitled to all such benefits. That apart, even the Employees Welfare Assistance Scheme dated 16.06.1995 also applies to the appellant. It is also his further case that with regard to the similarly placed employees, the respondents have given the benefit under the later Scheme dated 16.06.1995 and hence, the appellant is also entitled to the said Scheme.

Sri T.S.Anand, the learned counsel appearing on behalf of the respondents denied the claim of the appellant for any such entitlement and contending that his claim has been rightly rejected and in regard to the assumption as sought to be shown in respect of the other employees, the appellant would not stand any where near to them and all those employees have in fact applied to the later Scheme and the same was given to them, which cannot be extended to the appellant's case.

Having considered the submissions made on either side and on perusal of the material available on record, the only question that arises for consideration is as to whether on the facts and circumstances, the appellant can claim any benefit under the Employees Welfare Assistance Scheme dated 16.06.1995.

There is no serious dispute in regard to the aforesaid chequered events including the fact that the appellant retired from service on 19.01.1995 on his own application seeking voluntary retirement as per the application dated 21.12.1994. At the relevant point of time, the Scheme dated 10.11.1988 was in Vogue and subsequently, there has been a variation with added benefits under Voluntary Retirement Scheme dated 28.02.1995. Therefore, the appellant applied for such

benefits. However, the fact remains that the said later varied Scheme dated 28.02.1995 was virtually withdrawn by the respondents herein by a circular dated 16.06.1995 since the Administration Ministry did not approve the same. Therefore, the claim of the appellant under the revised Scheme dated 28.02.1995 totally falls to the ground. Having regard to such a situation, the appellant now falls back on the Scheme dated 16.06.1995, which has no relevance under the Employees Welfare Assistance Scheme dated 16.06.1995.

There is no dispute basically from the appellant side with regard to the said employees and the Scheme is totally a different one and stands on its own footing and is a fresh Scheme and certainly another Scheme in continuation to the existing Scheme. The varied Scheme dated 28.02.1995 has already been stood withdrawn as stated above. Therefore, the subsequent Scheme dated 16.01.1995 cannot be stated to be a continuation of the same. It is now well settled that as per the principals laid down in ***All India Reserve Bank Retired Officers Association*** and ***D.S.Nakara v. Union of India***, as long as there is any addition to the existing Scheme, the employees would be entitled to all such benefits irrespective of the fact that they are retired or not. However, it had been categorically held that the same couldn't be held applicable in respect of the new Schemes.

Coming back to the facts of the case, on the basis of the Scheme dated 16.06.1995, which is a fresh and new one and has no linkage whatsoever nature in the Scheme or the erstwhile Scheme, the appellant necessarily has to win or lose only on the existing Scheme but not on fresh Scheme since in the present Scheme

dated 16.06.1995 under which the appellant seeks benefits cannot be applicable and the respondents have rightly rejected the same. In regard to the pleas raised under Article 14 of the Constitution of India as per the discrimination, which is to be confirmed by the respondents to apply the later Scheme dated 16.06.1995 and nothing to do with the erstwhile Scheme, the benefit has been extended except making an allegation. No other material to show that the appellant is entitled to the later Scheme. Even the statement filed by the appellant shows that in regard to the other employees who were given benefits, all of them retired in July, September and October 1995 i.e., subsequent to the later Scheme, whereas the appellant herein has retired on 19.01.1995 itself. In view of the same, we do not find any merits in the appeal and the learned Single Judge was right in rejecting the same.

Accordingly, the Writ Appeal is dismissed. No costs.

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(B.PRAKASH RAO, J)

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(D.APPA RAO, J)

6th April 2006

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